Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 490 of 2001

1. Shri Deepak Kumar Gupta
   S/o Late Shri Nanak Chand
2. Shri Pradeep Kumar Gupta
   S/o Late Shri Nanak Chand
3. Smt. Shakunatala Devi
   W/o Late Shri Nanak Chand
   All R/o Barohnwala (Jolly Grant)
   Pargana Parwa Doon, Distt. Dehradun
4. Smt. Anuradha Mittal
   W/o Shri Virendra Mittal
   C/o M/s Murari Lal Darshan Lal
   Dhamawala Bazar, Dehradun
5. Smt. Indu Gupta
   W/o Shri Padam Gupta
   R/o Jhari Pani, Mussorie .....Revisionists

Versus

1. Nandan Kumar Mittal
   S/o Late Shri Sumer Chand
   R/o 158 Rajpur Road, Dehradun.
2. Smt. Rajkumari Mittal
   W/o Late Shri Sumer Chand
   R/o 158, Rajpur Road
   Dehradun. .....Respondents.

Shri V.K. Kohli, Sr. Advocate assisted by Shri I.P. Kohli, Advocate and Shri T.C. Pandey, Advocate, for the revisionists.
Shri B.P. Nautiyal, Advocate for the respondents.

Hon'ble Prafulla C. Pant, J.

This Revision preferred under Section 115 of Code of Civil Procedure, 1908, is directed against the judgment and order dated 09.11.2001, passed by learned Civil Judge (Senior Division) /F.T.C. - VI, Dehradun whereby in Original Suit No. 205 of 1997, certain paragraphs of the counter claim have been ordered to be struck off.

2. Brief facts of the case are that a suit was filed by the respondents/plaintiffs for permanent injunction and damages on the basis of title. It has been pleaded by the plaintiffs that they have inherited the property in question from one Shri Sumar Chand. Defendants/revisionists appear to have filed written statements and a counter claim, claiming their rights over the property in suit. However, in the counter claim the defendants have sought as many as eight reliefs including the relief for declaration that the marriage between Rajkumari and Sumer Chand was illegal and decree dated 13.12.1971 passed in Original Suit No. 112 of 1968, is nullity, and also that the family settlement dated 01.03.1987, arrived between some of the alleged members of the family of Shri Sumar Chand be declared illegal. Learned trial court after hearing the parties found that these three reliefs and pleadings relating thereto are frivolous and vexatious and amount to abuse the process of the court and accordingly directed that same be struck off from the counter claim

3. I heard learned counsel for the parties and perused the record.

4. Sub-rule (1) of Rule 6 A of Order VIII of the Code of Civil Procedure, 1908, provides that a defendant in a suit may, in addition to his right of pleading a set-off under Rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time

limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not. However, counter claims like the pleadings in the plain, are also subject to the provisions of Rule 16 of Order VI of the Code, which provides that the court may at any stage of proceedings, Order striking out any pleading which appears to it unnecessary, scandalous, frivolous or vexatious or which is otherwise an abuse of the process of the court.

5. It is settled principle of law that a marriage between the parties can be got declared void only by one of the parties to the marriage not by others. As such, relief claimed in the counter claim in this regard in respect of marriage between Rajkumari and Sumer Chand appears to be frivolous and vexatious. Similarly, the relief as to the declaration of decree passed on 13.12.1971 in Original Suit No. 112 of 1968, appears to be barred by time. So is the case with family settlement, challenged by the defendants. As such, the trial court has committed no error of law in striking out the pleadings in this regard from the counter claim under Order VI, Rule 16 of the Code. This Court is in agreement with the reasons mentioned the orders passed by the trial court whereby the application 61-C of the plaintiff is allowed to strike out certain paras of the counter claim.

6. For the reasons as discussed above, this revision is liable to be dismissed. The same is dismissed with the observation that it will be open for the defendants while proving their alleged title to show before the trial court that

the disputed family settlement or the decree passed in Original Suit No. 112 of 1968 was not binding on them or that Raj Kumari was not legally wedded wife of Sumer Chand.

(Prafulla C. Pant, J.)

Dt: 21st of April, 2006
Sweta